IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 379 of 2006
To
CRIMINAL APPEAL No. 395 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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INDIAN RAYON AND INDUSTRIES LTD. - Appellant
Versus
THE STATE OF GUJARAT & 1 – Respondents

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Appearance :

MR BB NAIK WITH MS MEGHA JANI for Appellant : 1,
MR MA PATEL ADDL PUBLIC PROSECUTOR for Respondent : 1,
MR PAHWA FOR M/S THAKKAR ASSOC. for Respondent : 2,

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 08/12/2006

COMMON ORAL JUDGMENT

1. The Counsel of the respective parties have made joint request for taking up and finally disposing of this group of 17 Criminal Appeals. The appellant is common in all these acquittal appeals. These appeals are arising out of identical orders of acquittal dated 4/12/2004 passed by the learned Additional Sessions Judge, Junagadh at Veraval in Criminal Appeals filed by the respective respondents / original accused challenging th orders of their conviction and punishment under Section 630 of the Indian Companies Act 1956, dated 1/1/2004 passed by the learned 3rd Joint JMFC, Veraval, in Criminal Cases filed by the present appellant company as the present respondents / original accused ex-employees of complainant company wrongfully withheld their respective residential quarters allotted to them by the complainant company during their employment. As the fact and law points are common in all these appeals, the Counsels' requests for hearing them together and disposing them by this Common Judgment was accepted.

2. All the Appeals were admitted by this Hon'ble Court (Coram: H.B.Antani, J.) vide order dated 3.3.2006 and the same were expedited.

3. Facts leading to filing of the present appeals in brief deserve to be set out as under.

4. The original complainant – Indian Rayon and Industries Ltd. (hereinafter referred to as 'the Company' for short) is a registered Company under the Act and it has its registered office at Veraval. The complainant had allotted staff quarters to the respective respondents for residential purpose during their employment with the complainant Company. The complainant Company terminated the services of respondents with effect from 7.10.2002. On termination of their service, the respondents – ex-employees were required to hand over peaceful and vacant possession of their respective staff quarters owned by the complainant Company and allotted to them as residential accommodation during their employment with the Company. The present respondents original accused did not hand over the vacant and peaceful possession of their respective quarters to the complainant Company despite notice for vacating the same served upon them. The complainant Company, therefore, lodged complaint before the learned JMFC, Veraval against all the respondents for commission of offence punishable under Section 630 of the Indian Companies Act and under Section 447 of the Indian Penal Code. It was the case of the complainant that the accused committed an offence under Section 630 of the Act as they wrongfully withheld the property of the Company and therefore, they be convicted and punished. The accused were summoned and their plea was

recorded. The accused pleaded not guilty and claimed to be tried. The prosecution evidence was recorded and case of the prosecution was put to the accused and thereafter, their further statement came to be recorded under Section 313 of the Code. The accused denied the case of the prosecution. The trial Court after appreciating the evidence on record acquitted the respective accused of charge of commission of offence under Section 447 of the IPC, however, convicted present respondents original accused of charge of offence under Section 630 of the Code and ordered payment of fine of Rs.500/- by each of the respondents original accused and in default thereof, to undergo, simple imprisonment for 30 days. Under Section 630(2) of the Act, the trial Court also ordered that the accused shall hand over peaceful and vacant possession of the quarters in their possession within one month, failing which, they were ordered to undergo 6 months simple imprisonment. The accused carried this order dated 1.1.2004 in Appeals under Section 374 of the Code in the Sessions Court, Junagadh at Veraval. The Sessions Court vide its order dated 4.12.2004 reversed the finding of the trial Court by setting aside the order of conviction and allowing individual appeals on the ground that as the labour proceedings challenging the termination of the accused by the complainant – Company were pending in the competent court, the termination itself cannot

be said to be legal and therefore, the withholding of the quarters allotted to the respective accused for residential purpose cannot be said to be wrongful. Being aggrieved and dissatisfied with the said order dated 4.12.2004 passed in Criminal Appeal, the original complainant – Company has preferred these appeals under Section 378 of the Code.

5. The facts, which are relevant for examining this appeals deserves to be set out in tabular form as under.

Sr No	Name of Respondent	Criminal Appeal No.(High Court	Criminal Appeal No. (Sessions Court)	Criminal Case No	Date of filing of complaint	Status of respondent in SCA no. of
1.	J.J.Mulia	379/2006	11/2004	347/03	11.02.2003	Petitioner No.27
2.	J.V.Bapodara	380/2006	17/2004	787/02	15.5.2002	Not a party
3.	Pankaj J. Dhandhusariya	381/2006	6/2004	292/03	5.5.2003	Petitioner No.16
4.	M.P.Sonaria	382/2006	3/2004	288/03	5.2.2003	Petitioner No.23
5.	H.H.Thakar	383/2006	4/2004	289/03	5.2.2003	Petitioner No.09
6.	S.B.Gunjaria	384/2006	5/2004	280/03	5.2.2003	Petitioner No.21
7.	Dhirendrakumar Singh	385/2006	12/2004	356/03	11.2.2003	Petitioner No.14
8.	Himanshu Dave	386/2006	16/2004	355/03	11.2.2003	Petitioner No. 31
9.	Rajnikant B. Pithadia	387/2006	9/2004	295/03	5.2.2003	Petitioner No.12

Sr No	Name of Respondent	Criminal Appeal No.(High Court	Criminal Appeal No. (Sessions Court)	Criminal Case No	Date of filing of complaint	Status of respondent in SCA no. of
10	Rabinarayan Raut	388/2006	15/2004	296/03	5.2.2003	Petitioner No.05
11	K.K.Rai	390/2006	2/2004	286/03	5.2.2003	Petitioner No.08
12	Rajkumar Sharma	389/2006	10/2004	354/03	11.2.2003	Petitioner No.22
13	P.L.Sondarva	391/2006	14/2004	294/03	5.2.2003	Petitioner No.25
14	C.Thomas	392/2006	18/2004	1972/02	31.12.2002	Not a party
15	Jagan B. Dusani	393/2006	7/2004	293/03	5.2.2003	Petitioner No.18
16	D.D.Vadhvana	394/2006	8/2004	348/03	11.2.2003	Petitioner No.19
17	Pankaj R. Chauhan	395/2006	19/2004	291/03	5.2.2003	Petitioner No.04

6. Shri B.B.Naik, learned counsel with Ms. Jani appearing for the appellant has submitted that order impugned in this Appeals being erroneous and contrary to the evidence on record, the same deserves to be quashed and set aside. Shri Naik has submitted that the Sessions Court has not taken into consideration the prevailing law in respect of Section 630 of the Act. The Section 630 of the Act is enacted for the purpose of preventing an employee and ex-employee of the Company from wrongfully withholding company's property. Tenor of the judgment of the Sessions Court indicate that the Sessions Court has

travelled beyond its jurisdiction and considered the legality and validity of the termination and therefore, the orders impugned in these present appeals being perverse, the same deserves to be quashed and set aside. Shri Naik has submitted that the pendency of the labour dispute before the labour Court, in itself cannot be ground for quashing the order of conviction as it is done by the Sessions Court in its order under challenge in these appeals. Shri Naik has relied upon the decision of the Apex Court in case of ***Shubh Shanti Services Ltd. Vs. Manjula S. Agarwalla and others,*** reported in (2005) 5 SCC p.30 and submitted that the pendency of the other proceedings including Civil proceedings cannot be valid ground for setting aside conviction nor can the same be ground for withholding Company's property when the relationship of employer and employee has been severed. The severing of relationship and its legality cannot be the subject matter of criminal court's jurisdiction. The proceedings under Section 630 of the Act being summary in nature, once it is established by the complainant Company that the employee or ex-employee and/or his representative have wrongfully withheld the property of the Company, then, the only logical and consequential order is the order of punishment and order of handing over the property back to the Company. Shri Naik has submitted that in view of this and in

view of the document at Ex. 19 i.e. Letter of allotment-cum-agreement, the document at Ex.20 indicating that services of the concerned respondents accused have come to an end by striking off the names of the respondents and testimony of the complainant go to show that the respondents were in wrongful possession of the property i.e. the residential premises in question. In light of these evidence on record and in absence of any evidence indicating that the respondents accused have any protection from any other court in form of any prohibitory orders and or any orders enabling them to retain the possession, the trial Court has rightly come to the conclusion that the accused have wrongfully withheld the residential premises. Shri Naik has also invited this court's attention to the conditions in the allotment letter, which is styled as an agreement between the Company and respondents. Those conditions unequivocally go to show that respondents original accused were alloted the residential premises during their employment with the complainant-Company. When the relationship of employer and employee comes to an end, then the employee respondent has no right to withhold the quarter on a ground that termination was illegal or invalid. Shri Naik has submitted that the documents on record and testimony of the complainant go to show that accused have wrongfully withheld the residential quarters

given to them during their tenure of employment. Shri Naik has submitted that the appellate Court has misdirected itself in considering the validity of termination. The cursory glance at the order of the appellate Court would go to show that the same is perverse as it is based on the points which are not within the jurisdiction of the Appellate Court. In view of this, Shri Naik has submitted that the order impugned in these appeals deserves to be quashed and order of JMFC convicting the respondents deserves to be restored and the conviction deserves to be restored.

7. Shri Pahwa and Shri Lakhani, learned counsel appearing for the respondents original accused have vehemently opposed the present acquittal appeals. It is contended on behalf of the respondents that these being acquittal appeals under Section 378 of the Code, the Court has a very limited scope for interfering with the order of acquittal, unless and until it is aptly demonstrated by the appellant that sustaining the acquittal would result into miscarriage of justice, the order of acquittal need not be interfered with. The counsel for the respondents have submitted that essential ingredients for brining home guilt on the part of the accused for commission of offence under Section 630 of the Act is wrongful withholding or wrongfully obtaining or knowingly making misapplication of

the property. Thus, the trial Court before convicting the accused has to come to a conclusion on the fact and circumstances on record that concerned employees who are accused of wrongful withholding of Company's property, have in fact, withheld the property wrongfully. While examining the aspect of wrongfully withheld property, the Court is duty bound to take into consideration the attending circumstances and therefore, when the order of striking off the names of the accused and terminating their services was per-se illegal, and when the same was subject matter of challenge before the Competent Labour Court, the same ought to have weighed with the trial Court and it could not have been said to be wrongfully withholding of the quarters, thus the trial court's judgment was erroneous and contrary to the facts and evidence on record. It has rightly been reversed by the Appellate Court in the Appeal preferred by the present respondents. The appellate Court has rightly decided that as the termination of employee itself was illegal and as the same was awaiting its adjudication before the competent Court, the withholding of residential quarter by the accused could not be said to be wrongfully withholding so as to convict them and punished them under Section 630 of the Act.

Reliance is placed upon the decision of

this Court in case of ***Yogeshkumar Kantilal Shah Vs. Gujarat Steel Tubes Ltd.,*** reported in 1993(2) GLH p.1039 and a submission is canvassed that when the dispute raised by the accused was in relation to the very termination, the very cause due to which he loses his right to hold the property and when the dispute was referred by the Government for adjudication, it cannot be said that the possession was wrongful so as to invoke Section 630 of the Act and convict the respondents for the offence under Section 630 of the Act.

8. The counsel for the respondents has also relied upon the decision of this Court in case of ***Pravinbhai Ganeshbhai Chaudhary Vs. Neutral Glass & Allied Industries Pvt. Ltd.,*** reported in 2001(4) GLR p.3481 in support of their submission that the Division Bench has also while appreciating the submission on behalf of the petitioner accused in respect of challenge to the applicability of Section 630 of the Act pending proceeding in Labour Court observed in para-9 as under :

> *“.....the petitioner's continued retention of the quarters could not be said to be wrongful in view of the provisions of Sec.33(1) of the I.D. Act, we find that the argument is misconceived. The said provisions intend to prohibit the employer*

from altering the conditions of service of workmen who have already raised an industrial dispute with respect to some other conditions of their service in existence. If workmen of a unit have raised an industrial dispute about wage revision, the employer cannot be permitted to nullify the reference by terminating the services of the workmen without obtaining permission of the concerned body before whom the dispute about wage revision is pending. It is in order to save the workman from this kind of retaliation that the legislature has enacted Sec.33(1) of the Act providing that during pendency of any conciliation proceedings before a conciliation officer or a Board of any proceeding before an arbitrator or a Labour or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned, in such dispute, the conditions of service applicable to them immediately before the commencement of such proceedings or for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workman concerned with such dispute save with the express permission in writing of the authority before which the proceeding is pending.

The above provisions cannot be applied in the case like the present one where there was no pending industrial dispute when the employee was dismissed from service. Upon such dismissal, all the logical consequences would follow including the stoppage of salary and all other benefits which go with the employment. The employee, would therefore, also lose the right to occupy the quarters allotted to him during his employment.

In view of the above discussion, we find no conflict between the provisions of Sec.33 of the I.D. Act and the provisions of Sec.630 of the Companies Act."

9. Shri Pahwa has relied upon the decision of this Court and submitted that during the pendency of Labour proceedings in competent court, and when the termination itself was subject matter of approval, the termination cannot be said to be legal and valid and therefore, the quarters withheld by the employees original accused cannot be said to be wrongfully withheld.

10. The respondents have relied upon the decision of the Apex Court in case of ***Jagdish Chandra Nijhawan Vs. S.K. Saraf***, reported in AIR 1999 SC p.217 in support of their submission that during

the pendency of Civil disputes and/or any other disputes before the Civil Courts, withholding of possession cannot be termed to be unauthorized or illegal. It is submitted on behalf of the respondents that the Apex Court had upheld the order of learned Magistrate discharging the accused employee, who had been proceeded against by the Company for wrongfully withholding flat given to him during his tenure of employment in the Company. The fact that proceedings in the labour courts are pending in itself is sufficient to show that possession cannot be said to have been withheld wrongfully. Shri. Pahwa has submitted that the present respondents were also under the protection of the order of this Court in Special Civil Application No. 10851 of 2002 passed on 22.12.2002 filed by the present respondent except respondent No. 2 and 14 respectively of the table reproduced herein above. In this order, this Court (Coram: N.G. Nandi, J.) passed the following order :

> *"Para3: Having regard to the facts and circumstances of the case, status-quo as regards occupancy/possession of the residential quarters by the petitioners shall be maintained by respondents Nos. 2 and 3 till 21.1.2003."*

11. Shri. Pahwa has submitted that after 21/1/2003 no protective orders are passed by any court

enabling the respondents to withhold the quarters. Shri. Pahwa has also taken this Court through the approval application preferred by the Company under Section 33(2)(b) of the I.D. Act, 1947 and order passed by the Labour Court, Junagadh in Reference Case Nos.14/2003 to 27/2003 and 30/2003 to 40/2003, wherein the Court has stayed the proceedings of Reference vide order dated 17.11.2005. Shri Pahwa has candidly admitted before this Court that none of these documents form part of the record and proceedings either of the trial Court or of the Appellate Court and for the first time, these documents have been relied upon by the respondents in support of the decision of acquittal. Shri Pahwa has also fairly admitted before this Court that on account of approval application, the labour Court has stayed the very References vide its order dated 17.11.2005 and this order of staying the reference has not been challenged by the respondents workmen. Shri Pahwa has submitted that due to such anomalous situation, the workmen could not have obtained the stay and/or prohibitory orders permitting them to retain the quarters in question.

12. It is submitted on behalf of the respondents accused that the proceedings in the labour Court are pending and therefore, the termination being per-se illegal, the withholding of quarter cannot be said to be a wrongful and therefore,

the decision of the appellate Court acquitting the respondents accused in their respective appeals deserve to be sustained. The respondents have invited this Court's attention to the testimony of the complainant and his cross-examination and stated that the defence side by putting questions clearly indicated that proceedings were pending and the termination was not legal. The Labour Court proceedings were pending. The termination was only by way of striking off the names of the concerned employee and that the complainant were not intending to produced on record any other document in respect of legal proceedings pending before the concerned lower court. Shri Pahwa has submitted that the request of the respondents for recalling the witness was considered by the trial Court and all relevant questions shaking up the case of the prosecution were put to the complainant's witness – original complainant. The witness has stated that he was not aware about the proceedings with regard to dismissal because he was not serving in that particular department. The witness has admitted that retirement age of the employee of the Company is 60 years. The witness has also admitted in his cross-examination that the accused had not attained the age of 60 years. He has also admitted that as per the prevailing rules, the person desirous of availing voluntary retirement, can avail the same. He has pleaded

no knowledge as to whether the accused ever intended to avail voluntary retirement scheme. He has admitted that he was not aware of the fact that any departmental proceedings were held against the accused. This witness has denied that the letter of striking off the names of the accused, had been issued vindictively. He has pleaded ignorance with regard to any challenge to the letter of striking off the names before the labour court. He has stated that he has no intention to produce such material, if any. In this behalf, he has denied the suggestion that he was aware that letter of striking off the names was challenged in the labour court and therefore, he was giving false testimony before the Court. He has stated that he was not interested in producing any other document in respect of the proceedings before the labour Court. Relying upon this testimony of the prosecution witness, it is vehemently submitted on behalf of the respondents that quarter in question cannot be said to be wrongfully withheld by the accused – present respondents.

13. Shri Pahwa and Shri Lakhani, learned counsel appearing for the respondents has also placed reliance upon the decision of this Court in case of ***Ronson Industrial Engineers Pvt. Ltd. Vs. State of Gujarat & Anr.,*** reported in 2002 (1) GCD p.616 (Gujarat) and submitted that this Court did not interfere with the order of

acquittal passed by the learned Magistrate when the arbitrary termination of service was under challenged before the Labour Court by way of Reference. Shri Pahwa has submitted that in the instance case also, the termination of the service being arbitrary, the same is challenged by way of Reference and during the pendency of the Reference, it was not open to the employer to ask the employees to vacate the quarters and therefore, the order passed by the learned Sessions Judge setting aside the conviction is absolutely just, proper and does not call for any interference. Shri Pahwa has also relied upon the provisions of Section 33 of the Industrial Disputes Act, 1947 (hereinafter referred to as the 'the I.D. Act' for short) and submitted that the termination in this case cannot be said to have taken effect for want of prior permission as it is envisaged under Section 33 of the Industrial Disputes Act, 1947. Shri Pahwa was asked as to whether Section 33(1) or Section 33(2) of the I.D. Act would be applicable to the facts and circumstances of the present case, Shri Pahwa has submitted that Section 33(1) would be applicable and in the alternative, Section 33(2) of the I.D. Act also may be applicable but he has submitted that looking to the facts and circumstances of the present case, Section 33(1) is applicable and when Section 33(1) of the I.D. Act is applicable, the employer before effecting the

termination was required to obtain prior permission in writing of the concerned forum, wherein the proceedings were pending in respect of the labour dispute, which was pertaining to wage revision. Shri Pahwa has submitted that in the alternative and assuming for the sake of submission that looking to the facts of the wage revision dispute the present termination would not be covered by Section 33(1) of the I.D. Act, then, it would be covered by Section 33(2) of the Act. In any case, even if Section 33(2) of the I.D. Act is applicable then the termination cannot be said to have taken effect unless and until it is being approved by the Competent Court or a forum. In this case, the employer has applied for such approval as the approval application has also been produced on the record of the appeals. In view of this, when the termination itself had not taken place in absence of approval, the employer was not justified in issuing notice of eviction and invoking of Section 630 of the Act for wrongful withholding of the properties under the Act.

14. Shri Pahwa has submitted that in view of this fact and in view of the fact that this being an acquittal appeal under Section 378 of the Code, this Court may not disturb the order of acquittal if it has not resulted into miscarriage of justice and therefore, the appeals may be dismissed.

15. This Court has heard the learned counsels for the parties at length. It has in fact come on record of the trial Court that the present respondents – employees were given residential accommodation in the staff quarters during the tenure of their employment. The allotment letter and/or the license agreement produced on record also show the terms and conditions of occupying the said quarters. The Condition Nos. 2, 5 7, 16 and 19 deserve to be set out as under.

> *"2.The licensee at whilst in the employment of the Company at Veraval and for the sole purpose of the licensee being more conveniently situated in such employment is hereby permitted by the Company to occupy as a Licensee during the term of his employment in the Company at Veraval the aforesaid accommodation or such other accommodation as may be given to the licensee at the Company's discretion.*
>
> *5.The occupation of the aforesaid premises by the licensee is a condition of his continuing employment with the Company at Veraval and such occupation shall forth with cease upon his employment being terminated by the Company or his death, or on his leaving such employment or when the Company decides to discontinue his license. Notice*

given by the Company to the licensee termination of employment shall be deemed to be sufficient notice of revocation of this license.

In case employee leaving the employment of the Company or his death, no notice of revocation of license would be necessary. In other case a week's notice of termination of license shall be considered adequate sufficient and legal.

7: This license for accommodation hereby given shall not or shall not be deemed to create any relationship of land lord and tenant between the Company and respect of the aforesaid accommodation.

16:This license is only a privilege to occupy the alloted premises and shall not create any transfer or a right to enjoy the alloted premises. No interest in the allotted premises is hereby transferred to the licensee. This license is a service occupation for the better performance of his duties as a servant by the licensee.

19: In case the licensee does not vacate the premises if so direct by the Company for any reason whatsoever he will be treated as unauthorized occupant and shall be liable to

pay a penal fee of Rs.10/- per day for the number of days he so remained in unauthorized occupation of the quarter."

16. Looking to these conditions, it can well be said that the premises were allotted to these respondents for accommodating themselves and their families during the employment with the complainant Company. The agreement at Ex.19 has been signed by the employee. It has not been disputed by the respondents that the quarters in question were allotted to them as residential accommodation because of employment with the Company. It is not the case of the respondents that irrespective of their employment, they were entitled to retain the quarters. Even during submission before this Court, Shri Pahwa has fairly admitted that quarters in question were allotted to these respondents only by way of residential accommodation during their employment. The allotment was coterminous with their employment with the respondents. The trial Court has taken into consideration the order of termination and it has come to the conclusion that employment of the respondents has come to an end and therefore, on demand by the Company, they were required to vacate the quarters. Withholding the possession of the quarters was not permitted in view of Section 630 of the Act. The document on record indicate that the quarters in question were not vacated by the

present respondents despite their being a notice for vacating the same. Against this back drop, the trial Court had come to the conclusion that respondents were holding the quarters wrongfully and therefore, they were convicted and ordered to pay fine of Rs.500/- and under the provisions of Section 630(2) of the Act, they were ordered to vacate their respective premises, failing which, they were ordered to undergo 6 months imprisonment.

17. The decision of this Court in case of Yogeshkumar Kantilal Shah (Supra) is of no avail to the present respondents. It deserves to be noted that in the aforesaid case, this Court has noted in para-7 of the judgment that since the Reference was delayed, the petitioner was required to approach the High Court by filing Special Civil Application No. 2615 of 1986. The petitioner also prayed for interim relief against the eviction from the flat in question. The petitioner's request for protecting his possession was declined by the labour Court and therefore, his prayer was rejected. Therefore, the petitioner had filed Special Civil Application No. 5749 of 1986, which was placed before this Court and the counsel appearing for the Company – respondent assures the Court that status-quo would be maintained pending admission and that is how the possession of the flat in question was protected and ultimately, it was

noticed by the Court that the possession of the flat was handed over to the Company. In view of these facts, the Revision Application was allowed and the conviction and sentence was set aside. In the instant case, it is even noticed by the Appellate Court, whose orders of acquittal are under challenge in these proceedings that the respondents' possession has not been protected by any Court. In view of this and in absence of any interim orders protecting the possession of the respondents, it cannot be said that their possession is not unauthorized or illegal.

The Apex Court decision in case of Jagdishchandra (Supra) would also be of no avail to the respondents. In the case of Jagdishchandra (supra), the Apex Court noted in para 5 of that judgment that there was agreement between the parties and as per the terms No. 6.1(iii) of the agreement, it was agreed between the parties that in the event of death of the employee or in case of the termination be due to physical or mental disability of the employee, the employee and/or his wife shall continue to enjoy such rent free accommodation on the same terms and conditions as contained in clause (i). Thus, the Apex Court has noted that the accused employee was entitled to retain the possession of the flat in question as per the terms of agreement even after his termination and/or

retirement and/or any disability till he takes up any other assignment of his own. Thus, the finding was that the retention of flat in question was on account of the terms and conditions of the agreement. Thus, the decision of the Apex Court rendered in view of the aforesaid facts and circumstances of the case in case of Jagdishchandra (supra) would be of no avail to the respondents, in whose case as it is stated herein above, the allotment letter and its conditions are absolutely clear, whereunder, the respondents have no right to retain the quarters after termination of the services with the complainant Company.

18. Shri Pahwa has attempted to elaborate his submission on the following observations made by the Division Bench in case of Pravinbhai Ganeshbhai Chaudhary (supra) in para 9 as under:

> *“para 9 : ..... The above provisions cannot be applied in the case like present one where there was no pending industrial dispute when the employee was dismissed from service.....”*

to mean that the provisions would apply, where Industrial Dispute was pending. This attempt of Shri Pahwa is misconceived as picking of few lines from the decision and elaborate the same, would not be a proper reading of the

judgment. Actually, the reading of entire paragraph, wherein this lines are mentioned, would show unequivocally that Shri Pahwa's reading is incorrect. It is expedient therefore to set out at the cost of repetition para 9 of the said judgment as under :

> *"........the petitioner's continued retention of the quarters could not be said to be wrongful in view of the provisions of Sec.33(1) of the I.D. Act, we find that the argument is misconceived. The said provisions intend to prohibit the employer from altering the conditions of service of workmen who have already raised an industrial dispute with respect to some other conditions of their service in existence. If workmen of a unit have raised an industrial dispute about wage revision, the employer cannot be permitted to nullify the reference by terminating the services of the workmen without obtaining permission of the concerned body before whom the dispute about wage revision is pending. It is in order to save the workman from this kind of retaliation that the legislature has enacted Sec.33(1) of the Act providing that during pendency of any conciliation proceedings before a conciliation officer or a Board of any proceeding before an arbitrator or a Labour or Tribunal or National Tribunal in*

respect of an industrial dispute, no employer shall in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned, in such dispute, the conditions of service applicable to them immediately before the commencement of such proceedings or for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workman concerned with such dispute save with the express permission in writing of the authority before which the proceeding is pending.

The above provisions cannot be applied in the case like the present one where there was no pending industrial dispute when the employee was dismissed from service. Upon such dismissal, all the logical consequences would follow including the stoppage of salary and all other benefits which go with the employment. The employee, would therefore, also lose the right to occupy the quarters allotted to him during his employment.

In view of the above discussion, we find no conflict between the provisions of Sec.33 of the I.D. Act and the provisions of Sec.630 of the Companies Act."

Thus, once the employment has come to an end either by way of termination or retirement, the relationship of employee and employer stands severed and therefore, its legality, which would be the subject matter of competent Labour Court, cannot in itself be a ground for retaining the quarters, which has been allotted by virtue of employees' employment with the Company, in absence of any protecting interim orders permitting them to retain the quarters.

19. Shri Pahwa's contention in light of provisions of Section 33 of the I.D. Act 1947, that the termination of the present respondents cannot be said to have been effective, appears to be bereft of any merits. Shri Pahwa has though attempted to attract the provisions of Section 33(1) of the I.D. Act but as it is clear from the record that the provisions of Section 33(1) requiring express written permission for terminating had not been applicable in the facts and circumstances of the instant case. At the best, it can be said that the provisions of Section 33(2) could have been attracted for which, the employer was required to pay wages for one month and apply to the authority for approval of the action taken by the employer. In the instant case before examining this, it deserves to be noted that the prosecution and defence have not led any evidence whatsoever in respect of pendency of the proceedings before

the labour court. However, for the first time in the present proceedings, Shri Pahwa has invited this court's attention to the application for approval and submitted that as the approval itself was required to be obtained, the termination of the employee – present respondents cannot be said to have taken effect so as to enable the Company ordering eviction and/or invoking Section 630 of the Companies Act. The provisions of Section 33(2) enables the employer to discharge and/or terminate the services of the employee and the only condition precedent is to pay one month wages and apply to the authority for approval but pending approval, it has not envisaged any relationship of employer or employee to subsist. From the date of termination, the wages and other facilities are coming to an end and in case, approval is not granted then only the employee is required to be reinstated, all the benefits should be available to him. Section 33(1) and Section 33(2) are couched in altogether different language and therefore, Shri Pahwa's submission in this regard is not helping the respondents at all.

20. Shri Pahwa has submitted that the prosecution had failed in bringing home the commission of offence as envisaged under Section 630 of the Act and therefore, the trial Court ought to have held that on account of failure on the part of

prosecution in proving its case beyond doubt, the acquittal ought to have been recorded. Shri Pahwa has drawn the attention of this Court to the cross-examination of the complainant and submitted that this being criminal proceedings, the cardinal principles of criminal trial deserves to be borne in mind and as it appears from the cross-examination of the complainant, it can well be said that the serious doubts were raised about the version of the complainant. Shri Pahwa's this submission is misconceived and without any merits. It deserves to be noted that the trial Court had categorically asked all the accused while recording their statements under Section 313 of the Code, whether they would like to lead any evidence or to give testimony on oath, to which, the accused had answered in negative. It deserves to be noted that on the record of the trial Court, the accused have not brought any material from their side indicating cogently pendency of valid labour proceedings nor have they produced even any order protecting their possession. Even during the hearing of this acquittal appeals, the counsel could not produced any order by any competent court protecting the possession of the respondents at any time. In fact the Apex Court in case of ***Abhilash Vinodkumar Jain (Smt.) Vs. Cox & Kings (India) Ltd. And others,*** reported in (1995) 3 SCC p.732 observed in para 15 as under:

" para 15 : Even though Section 630 of the Act falls in Part XIII of the Companies Act and provides for penal consequences for wrongful withholding of the property of the company, the provisions strictly speaking are not penal in the sense as understood under the penal law. The provisions are quasi-criminal. They have been enacted with the main object of providing speedy relief to a company when its property is wrongfully obtained or wrongfully withheld by an employee or officer of an ex-employee or ex-officer or anyone claiming under them. In our opinion, a proper construction of the section would be that the term "officer or employee" of a company in Section 630 of the Act would be a deeming fiction include the legal heirs and representatives of the employee or the officer concerned continuing in occupation of the property of the company after the death of the employee or the officer."

It deserves to be noted that the Apex Court has also referred this very paragraph in case of Shubh Shanti (Supra). Thus, the respondents i.e. original accused cannot profitably relying upon the cardinal principles of criminal jurisprudence and submit that though they have not led any evidence in support of their case, there attempt to raise doubt in the case of

prosecution should have been sufficient for their acquittal. This being misconceived the same deserves to be rejected.

21. The perusal of the decision of the appellant Court impugned in this appeals, indicate that it was contended that pendency of service proceedings in itself cannot be considered to be bar against the Company's right to resume possession and asked the respondents to vacate the quarters given during tenure of their employment. This contention appears to have been negatived by the learned Sessions Judge on the ground that pendency of proceedings against the arbitrary order of termination cannot be brushed aside and it was a relevant factor in deciding as to whether the withholding of the possession of the quarters was wrongful. Though the learned Sessions Judge has considered and accepted that the quarters in question were allotted by way of residential accommodation under the employment and therefore, the present respondents had right to occupy the same during continuation of their employment only. However, the Sessions Court has held that pending Labour dispute in respect of termination would not render withholding of staff quarters wrongful so as to attract the provisions of Section 630 of the Act. Learned Sessions Judge has also observed that it is correct that names of the employees i.e. present respondents have been struck off from the role

of the Company with effect from 7.10.2002 but that abruptly striking off has been challenged by way of Industrial Disputes before the labour Court at Junagadh and therefore, the act would not fall within the purview of wrongful withholding of immovable property of the company because the right and interest with regard to such type of industrial dispute has to be proceeded adjudicated and decided by the appropriate forum. i.e. Labour Court. The learned Sessions Judge has observed that, that question being at large before the labour Court, it was not open to company to ask the employees to vacate the quarters. The sessions Court has observed that if such termination is allowed to enable the employer for invoking the Section 630 of the Company Act, then it would be rule of 'might is right' and not the rule of law.

22. The judgment of the Sessions Court appears to have proceeded on the footing that the trial Court has erred in not appreciating the fact that termination appears to be improper and it was subject matter of challenged before the competent labour Court. This decision of Sessions Court appears to be erroneous and therefore, the decision cannot be sustained. It is noticed clearly by the Appellate Court that no prohibitory orders or interim orders were obtained by the respondents workmen entitling them to retain the possession, yet the Appellate

Court has observed that the possession cannot be said to be illegal or unauthorized. It deserves to be noted that there was no prohibitory order except the order of the High Court made in Special Civil Application No. 10815 of 2002 dated 27.12.2002, wherein also, the status-quo was ordered to be maintained till 21.1.2003. As it is shown in the tabular form, the present employee at Sr. No. 2 and 14 were not party to that petition and therefore, in their respect, the complaint had been filed on 15.5.2002 and 31.12.2002 respectively, whereas, in case of other accused, the complaint came to have been filed only in the month of February, 2002 i.e. after the expiry of stay. Shri Pahwa has submitted that thereafter no prohibitory order enabling the respondent to retain the quarters have been granted by any Court.

23. The decision in case of Ronson Industrial (Supra) would also be not in any way helpful to the respondents as it is clearly mentioned by this Court in para 6 of that judgment that employee in question was ordered to be reinstated and against this backdrop in the acquittal appeal, this Court had declined to interfere with the order of acquittal, which was passed by the learned JMFC.

24. In fact the decision in case of Pravinbhai (Supra) would help the case of the complainant –

Company. The relevant paragraphs reads as under:

"Para 12 : In the facts of the instant case also, it is apparent that after the order of dismissal was passed in January, 1997 and after the employer filed the complaint under Sec.630 of the Companies Act on 5.3.1997, the consequential order of eviction of quarters came to be passed by the learned Magistrate on 27.7.1998 on which date the order of dismissal was in full force, and therefore, the learned Magistrate was justified in giving a finding that in view of the order of dismissal, the petitioner had no right to continue to occupy the quarters and that such continued occupation of the quarters even after receiving the notice of eviction from the respondent-employer was sufficient to bring the case within the scope of Sec.630 of the Companies Act.

Para : 13: Both the Courts have given the finding that the petitioner was allotted quarters in question by the respondent – Company during his employment and that upon dismissal from service, the petitioner ceased to have any right to occupy the quarters in question and the continued occupation of the quarters from the date of the dismissal order and more particularly

from the date of service of eviction notice by the respondent – Company amounted to the wrongful withholding of the property of the respondent – Company. We would like to note that after the petitioner was dismissed from service in January, 1997, the respondent – Company had moved the learned Magistrate under Sec.630 of the Companies Act on 5.3.1997 and the proceedings came to be concluded by the learned Magistrate only in July, 1998 during which period the matter was already referred to the Labour Court as far back as on 2.4.1997. Even so, for a period of about 15 months, although the petitioner had the opportunity, he did not get any interim relief from the Labour Court(assuming that the Labour Court could have granted such interim relief). The learned Magistrate was, therefore, not bound to await the disposal of the reference by the Labour Court in which the petitioner has challenged his dismissal from service.

Para 14 : In view of the above discussion, we find no merit in this revision application and dismiss the same."

25. The decision of the Apex Court in case of Shubh Shanti (supra) would certainly help the case of the appellant. In that case, the flat of the Company had been retained by the heirs of the

deceased Director, which was situated in Sonmarg Flat. There was some agreement between the Company and the deceased employee to sale that flat, which was in Blue Heaven Society. The Civil Suit No. 7 of 1995 was filed by the heirs of the deceased employee i.e. wife and daughter against the appellant Company on 23.12.1994 for specific performance of the contract, wherein, interim relief in terms of statement that plaintiff would not be disturbed without resorting to due process of law, had been granted, yet, the Apex Court observed that the pendency of Civil Suit would not deprive the Company in absence of any prohibitory order from enforcing its right to institute proceedings under Section 630 of the Companies Act and therefore, this decision would rather help the case of the appellant.

26. The decision of the Apex Court in case of ***Maratt Rubber Ltd. Vs. J.K.Marattukalam,*** reported in 2000(9) SCC p.547 also would be applicable to the case of the present complainant that the pendency of civil proceedings would not come in way of invoking Section 630 of the Act. The civil proceedings or labour proceedings would, therefore, not come in the way of invoking Section 630 of the Act.

27. The lower Appellate Court has misdirected itself in appreciating the facts before it. The

appellate Court's observation made in paras 8, 9, 10, 11, 12, 13 and 14 go to show that mainly the Appellate Court has been guided by the factum of abrupt termination of the respondents. The observations made in these paragraphs were in fact, uncalled for. However, the Appellate Court ought to have taken into consideration that due to this so called abrupt termination of service of the respondents, the relationship of employees and employer had come to an end. Even if by virtue of Section 33(2) of the I.D. Act, the employer was required to apply for approval, then also, it would not infuse new life into the relationship, which stood severed with effect from 7.10.2002. From 7.10.2002, the respondents did not have any right to salary, right to any other benefits flowing from the employment and therefore, the retention of quarters, purely given for accommodating themselves and their families during their employment, cannot be said to be legal and permissible on a specious plea of pending labour litigation. The Appellate Court's decision is therefore, erroneous and perverse and deserves to be quashed and set aside. The trial Court has in fact, considered the testimony of the complainant at Ex. 18, allotment letter at Ex. 19, letter of relieving the employees – respondents at Ex. 20, the RPAD slip at Ex. 21, the notice at Ex. 22 and taken into consideration the further statements of the accused under Section 313 of the Code and come

to the conclusion that the retention of quarters by the respondents – original accused was unauthorized and illegal. This finding ought not to have been disturbed by the Appellate Court.

28. Before parting with the judgment, this Court is constrained to observe that the Appellate Court has absolutely misdirected itself while examining the impugned orders of convictions. The Appellate Court appears to have entangled itself into avoidable prolixity, rendering the impugned judgment off the tangent and away from the established principles of law applicable to the proceedings arising out of Section 630 of the Indian Companies Act 1956, rendering it perverse and contrary to the law deserving to be quashed and set aside.

29. Shri Pahwa, learned counsel appearing for the respondents has requested that 6 months time be granted to the respondents to vacate the quarters. Shri Naik, learned counsel appearing for the appellant has submitted that this being summary proceedings and as the proceedings are going on since long, such a long time cannot be granted. This Court is of the considered view that in the interest of justice, looking to the facts and circumstances of the case, the respondents are hereby ordered to vacate the quarters in question on or before 31st March, 2007, failing which, each of the accused to

undergo 6 months simple imprisonment.

30. In the result, the appeals succeed. The impugned order dated 4.12.2004 passed by the learned Additional Sessions Judge, Junagadh at Veraval in Criminal Appeal Nos. 11/2004, 17/2004, 6/2004, 3/2004, 4/2004, 5/2004, 12/2004, 16/2004, 9/2004, 15/2004, 2/2004, 10/2004, 14/2004, 18/2004, 7/2004, 8/2004, 19/2004 acquitting the respondents original accused is hereby quashed and set aside. The orders of learned JMFC, Veraval dated 1.1.2004 in Criminal Case No. 347/03, 787/02, 292/03, 288/03, 289/03, 280/03, 356/03, 355/03, 295/03, 296/03, 286/03, 354/03, 294/03, 1972/02, 293/03, 348/03, 291/03 convicting the respondents original accused are hereby restored. However, the orders under Section 630(2) of the Companies Act are modified and now, the accused of each of the criminal cases are ordered to vacate and hand over the peaceful possession of their respective quarters to the original complainant on or before 31st March, 2007, failing which, each of the accused shall undergo Simple Imprisonment for the period of 6 months.

The Registry is directed to keep copy of this judgment in each of the Criminal Appeals.

(S.R.BRAHMBHATT, J.)

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